

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| FEDERAL WAY SCHOOL DISTRICT, Employer. | |
| GLORIA BUTTS, Complainant, vs. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 286, Respondent. | CASE 130011-U-18 DECISION 12853 - PECB ORDER OF DISMISSAL |

On January 25, 2018, Gloria Butts (Ms. Butts) filed a complaint charging unfair labor practices with the Public Employment Relations Commission (PERC) under Chapter 391-45 WAC, naming the International Union of Operating Engineers, Local 286 (union) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice was issued on February 16, 2018, indicating that it was not possible to conclude that a cause of action existed at that time. Ms. Butts was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

On March 12, 2018, Ms. Butts filed an amended complaint. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

¹ At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

ISSUE

The amended complaint alleges:

Union interference with employee rights in violation of RCW 41.56.150(1) on an unspecified date, by breaching its duty of fair representation of Gloria Butts in termination matters.

The allegations in the amended complaint include triggering event dates outside the six-month statute of limitations and are untimely. Additionally the amended complaint lacks facts alleging a union duty of fair representation violation. Because the amended complaint is untimely filed and lacks facts, the amended complaint does not describe facts that could constitute a breach of the duty of fair representation within the Commission's jurisdiction.

BACKGROUND

According to the amended complaint Ms. Butts worked for the employer in the kitchen and was a member of the union. The amended complaint also includes facts related to events occurring between 2007 and 2015.

Ms. Butts had allegedly applied for Family and Medical Leave Act (FMLA) leave effective September 13, 2016. On September 12, 2016, Ms. Butts' FMLA leave request was allegedly denied by the employer. On September 16, 2016, Ms. Butts was allegedly terminated for job abandonment. Ms. Butts then applied for unemployment. When the employer learned of the unemployment application, on an unspecified date, the employer rescinded the termination. On an unspecified date, Ms. Butts was reinstated with no reduction in seniority.

Ms. Butts also alleges that on unspecified dates she was denied opportunities to make additional money during the 2015-2016 and 2017-2018 school terms.

On unspecified dates, Ms. Butts alleges she requested assistance from the union, but was told that her union representative was on vacation or sick.

ANALYSIS

Timeliness

Applicable Legal Standard

There is a six-month statute of limitations for unfair labor practice complaints. “[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission.” RCW 41.56.160(1). The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *City of Bellevue*, Decision 9343-A (PECB, 2007), citing *City of Bremerton*, Decision 7739-A (PECB, 2003). The start of the six-month period, also called the triggering event, occurs when a potential complainant has “actual or constructive notice of” the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

The rules for contents of a complaint are contained in WAC 391-45-050. WAC 391-45-050(2) requires the complainant to submit “[c]lear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.”

Application of Standard

To determine timeliness, the Commission looks at the dates of events in the complaint in relation to the filing date. The Commission only has the power and authority to evaluate and remedy an unfair labor practice if the complaint is filed within six months of the occurrence. The complaint was filed on January 25, 2018. In order to be timely, the complainant would have needed to describe triggering events that took place on or after July 25, 2017.

The amended complaint identifies various events that occurred between 2007 and September 16, 2016. All of these events occurred prior to July 25, 2017, and thus are untimely filed.

The amended complaint also alleged general events but did not include specific dates of occurrence. For example, the amended complaint alleges that Ms. Butts was not provided an opportunity to make additional money sometime during the 2017-2018 school term. The

amended complaint also alleges the union was not available when Ms. Butts requested assistance, but did not include a specific date as to when that occurred.

The continuing violation allegations are vague and lack details of specific dates and what events took place. The mere fact of a general continuation of alleged behavior does not form a basis for lengthening the statute of limitations period for filing complaints. *See King County*, Decision 3558-A (PECB, 1990). Ms. Butts would have needed to allege specific and detailed triggering events that occurred on or after July 25, 2017.

Based on the allegations in the complaint, the last identified triggering event was when Ms. Butts was terminated on September 16, 2016. Based on the alleged facts, for the complaint to have been timely, Ms. Butts would have needed to file a complaint with PERC no later than March 16, 2017.

Union Interference – Duty of Fair Representation

Applicable Legal Standard

It is an unfair labor practice for a union to interfere with, restrain, or coerce public employees in the exercise of their rights. RCW 41.56.150(1). The Commission explained the legal standard for duty of fair representation in *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). The duty of fair representation arises from the rights and privileges held by a union when it is certified or recognized as the exclusive bargaining representative under a collective bargaining statute. *C-Tran (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002), *citing City of Seattle*, Decision 3199-B (PECB, 1991). The Commission is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. While the Commission does not assert jurisdiction over “breach of duty of fair representation” claims arising exclusively out of the processing of contractual grievances, the Commission does process other types of “breach of duty of fair representation” complaints against unions. *City of Port Townsend (Teamsters Local 589)*, Decision 6433-B (PECB, 2000).

A union breaches its duty of fair representation when its conduct is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 177 (1967); *City of Seattle (Seattle Police Officers' Guild)*,

Decision 11291-A. In rare circumstances, the Commission asserts jurisdiction in duty of fair representation cases. *Id.* The Commission asserts jurisdiction in duty of fair representation cases when an employee alleges its union aligned itself in interest against employees it represents based on invidious discrimination. *Id.* In such cases, the employee bears the burden of establishing that the union took some action aligning itself against bargaining unit employees on an improper or invidious basis, such as union membership, race, sex, national origin, etc. *Id.*

Application of Standard

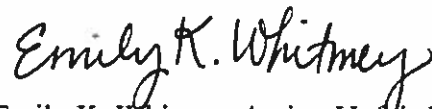
In the amended complaint, the facts alleged do not describe union interference by breaching its duty of fair representation under RCW 41.56.150(1). The amended complaint alleges that Ms. Butts was told that her union representative was on vacation or sick when Ms. Butts requested assistance. It is unclear when Ms. Butts contacted her union representative, and the amended complaint lacks facts as to whether the union failed its duty of fair representation for arbitrary, discriminatory, or bad faith conduct. Thus the union duty of fair representation allegation is dismissed.

ORDER

The amended complaint charging unfair labor practices in the above-captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 11th day of April, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



Emily K. Whitney, Acting Unfair Labor Practice Manager

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE - ISSUED 04/11/2018

DECISION 12853 – PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:


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